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DEPARTMENT OF COMMERCE
International Trade Administration
A-570-831

Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony With Final Results of New Shipper Review and Notice of Amended Final Results of New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On June 11, 2012,¹ the United States Court of International Trade (CIT) sustained the Department of Commerce's (the Department) results of redetermination² pursuant to the CIT's Hejia Remand Order 2.³

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in Timken,⁴ as clarified by Diamond Sawblades,⁵ the Department is notifying the public that the final judgment in this case is not in harmony with the Department's Final Results⁶ and is amending the final results of the new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review of November 1, 2007, through June 9, 2008, with respect to the margin assigned to Jinxiang Hejia Co., Ltd. (Hejia).

EFFECTIVE DATE: June 21, 2012.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-2316.

¹ See Jinxiang Hejia Co., Ltd. v. United States, Slip-Op.12-80 (CIT 2012).

² See Department of Commerce Final Results of Redetermination Pursuant to Remand, CIT Court No. 09-00471 (December 9, 2011) (Second Remand Results).

³ See Jinxiang Hejia Co. v. United States, Slip Op. 11-112 (CIT 2011) (Hejia Remand Order 2).

⁴ See Timken Co. v. United States, 893 F.2d 337 (Fed. Cir. 1990) (Timken).

⁵ See Diamond Sawblades Mfrs. Coalition v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (Diamond Sawblades).

⁶ See Fresh Garlic from the People's Republic of China: Final Results and Final Rescission, In Part, of New Shipper Reviews, 74 FR 50952 (October 2, 2009) (Final Results) and accompanying Issues and Decision Memorandum.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to completion of its new shipper review under the antidumping duty order on fresh garlic from the PRC, Hejia challenged certain aspects of the Department's Final Results at the CIT. On January 14, 2011 the Department filed its First Remand Results.⁷ On September 7, 2011, the CIT affirmed, in part, the First Remand Results and remanded the weighted-average methodology used by the Department to determine the surrogate value (SV) for the single-clove raw garlic input.⁸ On December 9, 2011, the Department issued its Second Remand Results under protest, wherein we removed a sales offer of Nepalese origin and thereafter used a simple average methodology to determine the SV for the single-clove raw garlic input. As a result, we calculated a revised weighted-average dumping margin of 0.00 percent for Hejia.

Timken Notice

In its decision in Timken, as clarified by Diamond Sawblades, the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision.⁹ The CIT's June 11, 2012, judgment sustaining the Second Remand Results constitutes a final decision of that court that is not in harmony with the Final Results. This notice is published in fulfillment of the publication requirements of Timken. Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision.

⁷ See Department of Commerce Final Results of Redetermination Pursuant to Court Order, CIT Court No. 09-00471 (January 14, 2011) (First Remand Results).

⁸ See Hejia Remand Order 2.

⁹ See Timken, 893 F.2d at 341.

Amended Final Results

Because there is now a final court decision with respect to Hejia, we are amending the Final Results with respect to the margin for Hejia. The revised dumping margin is as follows:

Exporter	Weighted-Average Margin (Percent)
Jinxiang Hejia Co., Ltd.	0.00

In the Final Results, Hejia was assigned a rate of 15.37 percent. Pursuant to court order, Hejia's revised margin for the period November 1, 2007, through June 9, 2008, is 0.00 percent. Accordingly, if the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise exported by Hejia during the POR at 0.00 percent. Additionally, because Hejia has not been subject to an administrative proceeding since its November 1, 2007, through June 9, 2008 new shipper review, Hejia's cash deposit rate will be 0.00 percent, effective as of June 21, 2012 (i.e., 10 days after the issuance of the CIT's ruling).

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

June 21, 2012
Date

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